



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/169644

PRELIMINARY RECITALS

Pursuant to a petition filed October 26, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance, a telephone hearing was held on December 21, 2015, at Milwaukee, Wisconsin. Hearings previously scheduled for November 2, 2015, and December 8, 2015, were rescheduled at petitioner's request. Post-hearing the matter was held open to allow respondent and petitioner to complete additional medical examinations. As of the date of this decision, the additional examinations have not been completed.

The issue for determination is whether the respondent correctly determined that petitioner is no longer eligible for the Family Care (FC) Partnership program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Attorney [REDACTED]
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner receives Family Care medical assistance benefits through her managed care organization, Independent Care Health Plan (iCare). A Long-term Care Functional Screen (LTCFS) was completed on October 5, 2015; the result of that screen was a determination that petitioner does not have a cognitive impairment, and therefore is not eligible for FC. Exhibit P-A.
3. The petitioner has received FC services for several years, and all LTCFS prior to October, 2015 identified her as an individual with a developmental disability.
4. Post-hearing, the respondent arranged for petitioner to be tested for a developmental disability.

DISCUSSION

The petitioner receives Family Care medical assistance through her care maintenance organization (CMO), iCare. This program provides appropriate long-term care services for elderly or disabled adults. See Wis. Stat. § 46.286 and Wis. Admin. Code, Chapter DHS 10. Applicants who meet the functional and financial eligibility standards are certified for eligibility and referred to a CMO. The CMO then works with the enrollee and her family and representatives to draft an individual service plan that cost-effectively addresses all of her long-term needs and outcomes:

The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate...The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

Wis. Admin. Code § DHS 10.44(2)(f).

The respondent predicated its determination that the petitioner is no longer eligible for FC upon its failure to verify that petitioner is developmentally disabled. The petitioner contends that she is developmentally disabled, but the respondent counters that its review of her medical records found no such diagnosis. The matter is further muddled by the fact that the petitioner's previous LTCFS's have indicated that petitioner is, in fact, developmentally disabled.

Following hearing, the petitioner agreed to participate in further testing in order to provide the respondent with the verification that it sought indicating that petitioner is developmentally disabled. The respondent agreed to review the results of this testing in order to determine whether its October, 2015, determination was correct. While I applaud the respondent's continued efforts to ensure that it makes the correct determination in this case, the fact that those efforts are presently on-going, almost four months post-

hearing, demonstrates that the respondent has not established that it correctly made its determination in October, 2015.

As a result this matter shall be remanded to the respondent to rescind the October, 2015, determination that petitioner is not eligible for FC services since she is not developmentally disabled. When the on-going medical assessment is complete, the respondent can provide the petitioner with its final determination, along with her appeal rights.

CONCLUSIONS OF LAW

ICare incorrectly ended the petitioner's prevocational services because it has failed to establish that petitioner is not developmentally disabled and therefore ineligible for FC services.

THEREFORE, it is

ORDERED

That this matter is remanded to ICare with instructions that within 10 days of the date of this decision it rescind its October, 2015, determination that petitioner is not eligible for FC services.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of April, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 20, 2016.

iCare
Office of Family Care Expansion
Health Care Access and Accountability
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